IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 94/2005
(Lokesh Vs. State of Rajasthan & Othes)

Date of Order : 21/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Vineet Jain for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
None present for the non-petitioners No. 2 and 3 though served.

BY THE COURT:-

By the instant petition under Section 482 Cr.P.C., petitioner Lokesh, minor son of non-petitioners No.2 and 3, aged about five years, through his next friend-maternal grand father Bheru Lal, has challenged the order dated 25.11.2004 passed by Additional Sessions Judge, Nimbahera Camp Badi Sadri (for short 'the revisional court' hereinafter) in Criminal Revision No.46/2004, whereby the revisional Court reduced the quantum of maintenance granted by Judicial Magistrate, Dungla (for short 'the trial court' hereinafter).

I have heard learned counsel for the petitioner. No

one appears for the non-petitioners No. 2 and 3 though served. Perused the order impugned.

From the order impugned it appears that on an application filed by non-petitioner No.3 Smt. Sita on her behalf and on behalf of her son Lokesh, the trial court granted maintenance at the rate of Rs. 1000/- per month in favour of non-petitioner No.3 and at the rate of Rs.500/- per month in favour of petitioner Lokesh. That order came to be challenged by non-petitioner No.2 Prabhulal before the revisional court. It appears that before the revisional court, non-petitioners No.2 Prabhulal and No. Smt. Sita wife of Prabhulal, compromised the matter and on the basis of compromise filed by the parties, the maintenance allowance was reduced from Rs. 1500/- per month to Rs.800/- per month.

It appears from the order of the revisional court, that the non-petitioners No. 2 and 3 have compromised the matter. If at all the non-petitioners No. 3 wife has compromised the matter with non-petitioner No.2 husband and as stated by counsel for the petitioner that now they have started living together, then it could be in respect of maintenance allowance granted in favour of non-petitioner No.3 wife at the rate of Rs.1000/- per month by the trial court. Thus, the maintenance granted in favour of

minor Lokesh the petitioner, could not have been reduced without permission of the Court. The revisional court, therefore, has not taken care of the interest of the minor Lokesh while passing the impugned order. In the circumstances, therefore, the order impugned to the extent reducing the maintenance allowance granted in favour of minor Lokesh cannot be sustained and is liable to be set aside and the matter deserves to be remanded to the revisional court to decide the revision afresh qua petitioner Lokesh keeping in view his interest.

Consequently, the petition is allowed. The order impugned dated 25.11.2004 to the extent reducing the maintenance allowance qua petitioner Lokesh is set aside and the matter is remanded to the revisional court to decide the matter afresh qua petitioner Lokesh keeping in view the interest of minor. Stay petition stands disposed of.

(H.R.PANWAR),J.

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